

HAMPTON P. STEWART

IBLA 82-1004

Decided May 2, 1983

Appeal from decision of the Wyoming State Office, Bureau of Land Management rejecting oil and gas lease application. W 78254

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:  
First-Qualified Applicant

Where a lease agreement is mailed to a first-qualified applicant at his last address of record by certified mail, delivery to that address is adequate regardless of whether it was actually received by the applicant or not. A tender of lease agreement by the applicant more than 30 days subsequent to the date of delivery is properly rejected.

2. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications:  
Filing--Oil and Gas Leases: First-Qualified Applicant--Oil and Gas Leases: Noncompetitive Leases

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

APPEARANCES: Hampton P. Stewart, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Hampton P. Stewart appeals from a decision dated June 3, 1982, by the Wyoming State Office, Bureau of Land Management (BLM), rejecting simultaneous oil and gas lease application W 78254, which received first priority for parcel WY 6173 in the November 1981 drawing. BLM rejected the application

because appellant failed to submit the executed lease agreement stipulations, and the first year's rental within 30 days of receipt of notice, as required by 43 CFR 3112.4-1(a). That regulation provides, in pertinent part: "The executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice. Timely receipt of the properly signed lease and rental constitutes the applicant's offer to lease." 43 CFR 3112.6-1(d) provides that the application of the first-qualified applicant shall be rejected if an offer is not filed in accordance with 43 CFR 3112.4-1.

Appellant received BLM's request to execute the lease agreement on April 26, 1982. Consequently, the executed agreement and the first year's rental were due in the BLM office on May 26, 1982.

[1] On appeal appellant explains that he failed to timely return the application because he had moved to a new address and his office personnel did not forward the certified mail containing the documents. It is unfortunate that the letter was not promptly forwarded. It is most likely that if the lease agreement had been forwarded to Stewart in a timely manner he would have executed and returned it promptly. However, the certified delivery to the last address of record is adequate notice, regardless of whether it was actually received or not. 43 CFR 1810.2(b). 1/ When Stewart failed to submit the lease agreement and rental within the required 30-day period provided by the regulation, rejection of a subsequently submitted lease agreement was mandatory. Theresa Jubilian, 57 IBLA 354 (1981); Albert J. Fines, 27 IBLA 61 (1976).

[2] Under the provisions of 43 CFR 3112.4-1(a), the executed lease agreement and first year's rental payment must be filed in the proper BLM office within 30 days from the date of receipt of notice. BLM may not accept the forms and rental payment after the 30-day period because the rights of the second- and third-qualified applicants have intervened. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Strict compliance with the above regulation is mandatory, in order to ensure fairness and uniformity to all applicants in the simultaneous drawing. Thomas E. Lewis, 70 IBLA 69 (1983); Warren R. Haas, 66 IBLA 107 (1982).

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1/ 43 CFR 1810.2(b), governing communications by mail when mailing requirements are met provides:

"(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities."

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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R. W. Mullen  
Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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Bruce R. Harris  
Administrative Judge.

